

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AUG 11 2010

JAMES R. LARSEN, CLERK  
DEPUTY  
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SIDNEY D. JENKINS, III,

Plaintiff,

vs.

KEN JURGENSEN,

Defendant.

NO. CV-10-5057-JPH

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING FIRST AMENDED  
COMPLAINT

1915(g)

Magistrate Judge Hutton filed a Report and Recommendation on June 28, 2010, recommending Mr. Jenkin's First Amended Complaint be dismissed as he failed to state facts from which the court could infer an Eighth Amendment claim. There being no objections, the court **ADOPTS** the Report and Recommendation. The First Amended Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three

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1 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file  
2 future claims.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
4 Order, enter judgment, forward copies to Plaintiff at his last known address, and close  
5 the file. The District Court Executive is further directed to forward a copy of this Order  
6 to the Office of the Attorney General of Washington, Criminal Justice Division. The  
7 court certifies any appeal of this dismissal would not be taken in good faith.

8 **DATED** this 11<sup>th</sup> day of August 2010.

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12 LONNY R. SUKO  
13 CHIEF UNITED STATES DISTRICT JUDGE  
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